

HOUSE FLOOR SUBSTITUTE FOR
HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR
HOUSE BUSINESS AND INDUSTRY COMMITTEE SUBSTITUTE FOR
HOUSE BILL 245

46TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2004

AN ACT

RELATING TO HEALTH; ENACTING THE HEALTH CARE REGISTRY ACT;
ESTABLISHING A REGISTRY OF EMPLOYEES DETERMINED TO HAVE
COMMITTED ABUSE, NEGLIGENCE OR MISAPPROPRIATION OF PROPERTY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE.--This act may be cited as the
"Health Care Registry Act".

Section 2. DEFINITIONS.--As used in the Health Care
Registry Act:

A. "abuse" means the willful infliction of injury,
unreasonable confinement, intimidation or punishment with
resulting physical harm, pain or mental anguish;

B. "department" means the department of health;

C. "direct care" means face-to-face services
provided to a service recipient;

1 D. "employee" means a non-licensed person employed
2 or contracted to provide services to persons who are
3 developmentally disabled, physically disabled or elderly,
4 including a personal care attendant funded through the medicaid
5 program;

6 E. "misappropriation of property" means the
7 deliberate misplacement or wrongful, temporary or permanent use
8 of a resident's belongings or money without the resident's
9 consent;

10 F. "neglect" means the failure to provide goods and
11 services necessary to avoid physical harm, mental anguish or
12 mental illness;

13 G. "provider" means an agency or organization that
14 delivers home and community-based services to adults or
15 children with developmental disabilities, including an
16 intermediate care facility for the mentally retarded, an agency
17 that delivers services to the elderly or an agency that
18 delivers services to the physically disabled. "Provider" does
19 not include managed care organizations, except for their
20 employees who provide respite care to persons who are
21 developmentally disabled, physically disabled or elderly;

22 H. "reasonable basis" means when facts and
23 circumstances within the provider's knowledge and of which the
24 provider had reasonably trustworthy information are sufficient
25 in themselves to justify a determination that abuse, neglect or

1 misappropriation of property has occurred;

2 I. "registry" means the health care registry; and

3 J. "secretary" means the secretary of health.

4 Section 3. REGISTRY OF EMPLOYEES DETERMINED TO HAVE
5 COMMITTED ABUSE, NEGLIGENCE OR MISAPPROPRIATION OF PROPERTY. --

6 A. The department shall establish a "health care
7 registry" of employees determined by the department to have
8 committed abuse, neglect or misappropriation of property
9 pursuant to the Health Care Registry Act.

10 B. Before a provider hires or contracts with an
11 employee, the provider shall inquire of the department whether
12 the employee is included in the registry.

13 C. When the department receives an inquiry
14 regarding whether the employee or prospective employee is
15 included in the registry, the department shall inform the
16 provider whether the employee or prospective employee is
17 included in the registry.

18 D. Providers that hire employees shall maintain
19 documentation demonstrating that they have checked the registry
20 for each applicant being considered for employment.

21 E. A provider shall not hire or contract with an
22 employee in a direct care setting or other setting that allows
23 for routine and unsupervised physical or financial access to
24 persons who are developmentally disabled, physically disabled
25 or elderly if the employee is included in the registry.

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1 F. A division of the department or other
2 governmental agency funding services to the developmentally
3 disabled, physically disabled or elderly or contracting for the
4 personal care attendant option of the medicaid program may at
5 its discretion not enter into or renew a contract with a
6 provider that fails to comply with the provisions of Subsection
7 E of this section.

8 G. A provider that reports allegations of abuse,
9 neglect or misappropriation of property or that fails to hire
10 an employee because the employee is included in the registry is
11 presumed to be acting in good faith and shall be immune from
12 liability as to that employee for both civil damages and
13 criminal prosecution. If, however, the provider acted in bad
14 faith or with malicious purpose, the provider is not immune
15 from liability as to that employee.

16 H. After a period of five years, an employee placed
17 on the registry may petition the department for removal of the
18 employee's name from the registry. The department shall make a
19 good faith effort to provide notice by certified mail to an
20 employee placed on the registry informing the employee that the
21 employee is eligible for reconsideration. Petitions for
22 removal shall be in writing and mailed or hand-delivered to the
23 department. Upon receipt of a petition, the department shall
24 conduct a fair hearing. Judicial review pursuant to Section
25 39-3-1.1 NMSA 1978 shall apply.

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1 I. By January 1, 2005, the department shall
2 promulgate rules necessary to carry out the provisions of the
3 Health Care Registry Act, including an articulation of
4 standards for determining neglect and a phase-in of the
5 registry by July 1, 2006 for employees of:

6 (1) providers to adults and children with
7 developmental disabilities;

8 (2) providers to adults and children with
9 physical disabilities;

10 (3) providers to the elderly; and

11 (4) personal care attendants funded through
12 the medicaid program.

13 J. The department shall promulgate rules necessary
14 for the implementation of the Health Care Registry Act. The
15 rules shall include:

16 (1) the information that shall appear in the
17 registry;

18 (2) the procedure for making a determination
19 of abuse, neglect or misappropriation of property pursuant to
20 the provisions of this section;

21 (3) the time frame within which the department
22 shall inform a provider whether an employee is included in the
23 registry following the department's receipt of an inquiry by a
24 provider pursuant to the provisions of this section;

25 (4) the procedure to be followed for reporting

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1 abuse, neglect or misappropriation of property, for reviewing
2 and investigating a claim of abuse, neglect or misappropriation
3 of property and for determining whether there is a reasonable
4 basis for a complaint of abuse, neglect or misappropriation of
5 property pursuant to the provisions of Section 4 of the Health
6 Care Registry Act;

7 (5) the process by which the department
8 informs the employee of the employee's due process rights,
9 including the right to a hearing pursuant to the provisions of
10 Section 4 of the Health Care Registry Act;

11 (6) what constitutes a reasonable basis for a
12 complaint pursuant to the provisions of Section 4 of this act;

13 (7) the process by which the department shall
14 access an employee's records; and

15 (8) the process by which a provider shall
16 maintain documentation on accessing registry information.

17 Section 4. REVIEW OF REPORT OF ABUSE, NEGLECT OR
18 MISAPPROPRIATION OF PROPERTY--HEARING. --

19 A. In addition to other actions required by law,
20 the department shall review each report it receives of abuse,
21 neglect or misappropriation of property of a person who is
22 developmentally disabled, physically disabled or elderly being
23 served by providers. The department shall also review the
24 reports of abuse, neglect or misappropriation of property that
25 involves employees of providers that it receives from the

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1 children, youth and families department or a protective
2 services agency.

3 B. The department shall investigate all allegations
4 to determine whether there is a reasonable basis for a
5 complaint of abuse, neglect or misappropriation of property.

6 C. If the department determines that abuse, neglect
7 or misappropriation of property has occurred, the department
8 shall notify the employee by personal service or by registered
9 mail with a return receipt of the employee's right to a fair
10 hearing. The notice, which shall also be mailed to the
11 provider, shall include:

12 (1) the nature of the determination of the
13 abuse, neglect or misappropriation of property;

14 (2) the date and time of the occurrence;

15 (3) the employee's right to a fair hearing;

16 (4) the department's intent to report the
17 substantiated findings, once the employee has had the
18 opportunity for a hearing, to the registry; and

19 (5) that the employee's failure to request a
20 hearing in writing within thirty days from the date of the
21 notice shall result in the department's reporting of the
22 employee's placement on the registry to the provider that
23 employs the implicated employee, to the employee and to the
24 registry.

25 D. If an employee waives the right to a hearing or

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1 receives a hearing pursuant to Subsection C of this section and
2 the decision of the hearing upholds the department's
3 determination that abuse, neglect or misappropriation of
4 property has occurred, the department shall report the
5 employee's placement on the registry to the provider that
6 employs the implicated employee, to the employee and to the
7 registry.

8 E. If an employee receives a hearing pursuant to
9 Subsection C of this section and the decision of the hearing
10 does not uphold the department's determination that abuse,
11 neglect or misappropriation of property has occurred, the
12 department shall notify the employee and the provider by mail
13 that the department's determination was unsubstantiated and
14 that the department will not report its findings to the
15 registry.

16 F. If the department determines that the employee
17 has committed abuse, neglect or misappropriation of property,
18 the department shall notify the employee of the employee's
19 right to judicial review pursuant to the provisions of Section
20 39-3-1.1 NMSA 1978.

21 G. Records obtained by the department pursuant to
22 the Health Care Registry Act shall be used only to determine
23 whether an employee has committed abuse, neglect or
24 misappropriation of property that would disqualify the employee
25 from employment as a caregiver. Information pertaining to a

1 person receiving services, including investigative reports,
2 shall be confidential.

3 H. The department shall not implement the registry
4 if funding is not available for implementation.

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